

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,  
 Plaintiff,  
 v.  
 MYKALAI KONTALAI,  
 Defendant.

Case No. 2:20-cr-00109-CDS-DJA

**Order**

[Docket No. 51]

Defendant first appeared before this Court on May 7, 2024, for his initial appearance and detention hearing. Docket No. 37. At Defendant's request, the detention hearing was continued to May 14, 2024. *Id.* On May 13, 2024, the parties filed a stipulation to continue the detention hearing, as defense counsel had been unable to meet with his client. Docket No. 40. The Court granted the motion and continued the detention hearing to May 20, 2024. Docket No. 42. On May 20, 2024, at the request of the parties, the Court again continued the detention hearing to May 28, 2024. Docket No. 48.

On May 27, 2024, at 5:23 p.m.,<sup>1</sup> Defendant filed an "emergency motion for leave of wheelchair and related relief." Docket No. 51. In the motion, without citing to any points or authorities, Defendant asks the court to order that Defendant is to use a wheelchair "on the premises of the U.S. District Court and elsewhere in connection with a hearing in this case on May 28, 2028 [sic], from 10 A.M. and in future occasions." *Id.* at 2.

"The filing of emergency motions is disfavored because of the numerous problems they create for the opposing party and the court resolving them." *Cardoza v. Bloomin' Brands, Inc.*, 141 F. Supp. 3d 1137, 1140 (D. Nev. 2015) (citing *In re Intermagnetics America, Inc.*, 101 B.R. 191, 193-194 (C.D. Cal. 1989)). Safeguards have evolved over many decades and are built into the Federal Rules and this Court's Local Rules. *Mission Power Eng'g Co. v. Continental Cas.*

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<sup>1</sup> The Court takes judicial notice that May 27, 2024 was Memorial Day, a federal holiday, and that the Court was therefore closed.

1 Co., 883 F. Supp. 488, 491 (C.D. Cal. 1995). A request to bypass the default procedures through  
2 the filing of an emergency motion impedes the adversarial process, disrupts the schedules of the  
3 Court and opposing counsel, and creates an opportunity for bad faith gamesmanship. *Cardoza*,  
4 141 F. Supp. 3d at 1140-41. As a result, the Court allows motions to proceed on an emergency  
5 basis in only very limited circumstances. *See, e.g.*, Local Rule 7-4(b) (“Emergency motions should  
6 be rare”).

7 In addition to various technical requirements, *see* Local Rule 7-4(a), parties seeking  
8 emergency relief must satisfy several substantive requirements. When a party files a motion on  
9 an emergency basis, it is within the sole discretion of the Court to determine whether any such  
10 matter is, in fact, an emergency. Local Rule 7-4(c). Generally speaking, an emergency motion is  
11 properly presented to the Court only when the movant has shown (1) that it will be irreparably  
12 prejudiced if the Court resolves the motion pursuant to the normal briefing schedule and (2) that  
13 the movant is without fault in creating the crisis that requires emergency relief or, at the very least,  
14 that the crisis occurred because of excusable neglect. *Cardoza*, 141 F. Supp. 3d at 1142 (citing  
15 *Mission Power*, 883 F. Supp. at 492). If there is no irreparable prejudice, sufficient justification  
16 for bypassing the default briefing schedule does not exist and the motion may be properly decided  
17 on a non-expedited basis. *Cardoza*, 141 F. Supp. 3d at 1142-43. If there is irreparable prejudice  
18 but the movant created the crisis, the Court may simply deny the relief sought. *Id.* at 1143. The  
19 relevant inquiry is not whether the opposing party was at fault with respect to the underlying  
20 dispute, but rather “[i]t is the creation of the crisis—the necessity for bypassing regular motion  
21 procedures—that requires explanation.” *Mission Power*, 883 F. Supp. at 493. For example, when  
22 an attorney knows of the existence of a dispute and unreasonably delays in bringing that dispute  
23 to the Court’s attention until the eleventh hour, the attorney has created the emergency situation  
24 and the request for relief may be denied outright. *See Cardoza*, 141 F. Supp. 3d at 1143 (collecting  
25 cases). Quite simply, emergency motions “are not intended to save the day for parties who have  
26 failed to present requests when they should have.” *Intermagnetics America*, 101 B.R. at 193; *see*  
27 *also* Local Rule 7-4(b) (“[The] failure to effectively manage deadlines, discovery, trial, or any  
28 other aspect of litigation does not constitute an emergency”).

1 Here, Defendant failed to comply with the requirements for filing an emergency motion  
2 which, in and of itself, would constitute reason for denial of the motion. In addition, however,  
3 Defendant failed to provide any points and authorities in support of his motion. “The failure of a  
4 moving party to include points and authorities in support of the motion constitutes a consent to  
5 denying the motion.” LCR 47-3. Therefore, the Court could deny the motion on this basis, as  
6 well.

7 Despite all of these deficiencies, the Court has looked at the merits of the motion. The  
8 request in the motion is overly broad and covers areas outside this Court’s jurisdiction. Further,  
9 the motion was filed in the evening of a court holiday the day before Defendant was set to be  
10 transferred – therefore, not only did the United States not have an opportunity to respond to the  
11 motion before Defendant was transferred to the Court, but the Court did not have time to rule on  
12 the motion prior to Defendant’s transfer. Therefore, the motion is moot.

13 Accordingly, for all of the reasons stated above, Defendant’s motion is **DENIED**. Docket  
14 No. 51.

15 IT IS SO ORDERED.

16 Dated: May 28, 2024.

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18 NANCY J. KOPPE  
19 UNITED STATES MAGISTRATE JUDGE  
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